

**RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC**  
ATTORNEYS AT LAW

ALAN M. RIFKIN  
SCOTT A. LIVINGSTON (MD, DC)  
LAURENCE LIEVITAN  
EDGAR P. SILVER†  
MICHAEL V. JOHANSEN  
JOEL D. ROZNER (MD, DC)  
RICHARD K. REED  
NORMAN D. RIVERA  
M. CELESTE BRUCE (MD, DC)  
JAMIE B. EISENBERG (MD, DC, NY)  
CHARLES S. FAX (MD, DC, NY) ††  
CAROLYN JACOBS††  
PATRICK H. RODDY  
ELLEN B. FLYNN (MD, DC, CT)  
ERIC L. BRYANT  
MICHAEL D. BERMAN (MD, DC) ††  
JOYCE E. SMITHEY (MD, DC, NH)  
L. TERI SPRADLIN-DAHN††  
MELVIN A. STEINBERG†  
MICHAEL S. NAGY (MD, VA)  
MEGAN BRAMBLE OWINGS  
LANCE M. YOUNG  
LANCE W. BILLINGSLEY†  
TIMOTHY K. HOGAN†  
ELIZABETH K. MILLER†  
MERYL A. KESSLER  
† OF COUNSEL  
†† COUNSEL  
  
(NONLAWYER/CONSULTANTS)  
DERRICK L. GREEN  
JOSH M. WHITE

600 WASHINGTON AVENUE • SUITE 305  
TOWSON, MARYLAND 21204  
(410) 583-9433 • FAX (410) 583-9439  
WWW.RLLS.COM

225 DUKE OF GLOUCESTER STREET  
ANNAPOLIS, MARYLAND 21401  
(410) 269-5066 • FAX (410) 269-1235

6305 IVY LANE • SUITE 500  
GREENBELT, MARYLAND 20770  
(301) 345-7700 • FAX (301) 345-1294

1133 21<sup>ST</sup> STREET, NW  
WASHINGTON, DC 20007  
(202) 639-0349

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**MARYLAND HEALTH  
CARE COMMISSION**

September 10, 2008

**Via Facsimile and E-mail**

Colleen Lates  
Administrative Officer, Center for Hospital Services  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Re: Notice of Petition to Amend COMAR 10.24.09  
Request for Public Comments

Dear Ms. Lates:

This letter is written on behalf of HealthSouth Corporation ("HealthSouth") in response to the Request for Public Comment concerning the petition filed by Calvert Memorial Hospital ("CMH") (the "Petition") requesting that the Commission amend the State Health Plan for Acute Inpatient Rehabilitation Services (the "Rehabilitation Chapter") to eliminate the docketing and approval rules that require rehabilitation hospitals and units in a regional service area to maintain a certain occupancy rate in order for docketing and/or approval, as applicable, of a Certificate of Need application. HealthSouth is a national rehabilitation provider with extensive experience and expertise in the areas of inpatient rehabilitation. HealthSouth operates HealthSouth Chesapeake Rehabilitation Hospital, a 54-bed rehabilitation hospital in Salisbury, Maryland.

In light of the fact that the Rehabilitation Chapter has not been updated since 2001, HealthSouth respectfully requests that that Commission update the Rehabilitation Chapter in its entirety. Recognizing the time that it likely will take to re-draft this chapter, HealthSouth offers the following comments in response to the Petition of CMH. In summary, and as explained in detail below, HealthSouth submits that:

1. Any amendments to the Rehabilitation Chapter should apply to all jurisdictions/regional service areas.
2. The Docketing Rule should be eliminated assuming the Rehabilitation Chapter retains an Approval Rule with occupancy requirements.
3. The Approval Rule should be revised to permit an applicant to demonstrate substantial evidence why the occupancy requirement should not apply.

In addition, and in light of the occupancy requirements referenced below, HealthSouth also requests that the Commission publish the occupancy for all rehabilitation hospitals and units on an annual basis.

#### REHABILITATION CHAPTER AMENDMENTS

HealthSouth maintains that any amendments to the Rehabilitation Chapter should be applicable to all jurisdictions/regional service areas. Although HealthSouth understands the concerns of CMH with respect to its regional service area, there is insufficient evidence to demonstrate that the Docketing Rule or the Approval Rule should be waived only in that regional service area.

#### THE DOCKETING RULE

The Rehabilitation Chapter Docketing Rule at COMAR 10.24.09.04C.(1) prohibits the docketing of an application to provide inpatient rehabilitation services unless the existing rehabilitation providers in a regional service area have met certain occupancy requirements for the most recent 12-month period. HealthSouth maintains that the occupancy rate of existing facilities cannot be ignored when approving a new rehabilitation provider. HealthSouth does agree, however, that because most regional service areas have few rehabilitation providers, the occupancy percentage in a single facility may have the unintended consequence of not permitting the entry of a new provider where there may be need. In addition, such a docketing rule does not permit the introduction of evidence to explain why a particular facility may have low occupancy despite demand and need. Thus, HealthSouth agrees that the Docketing Rule as currently drafted may be too restrictive and HealthSouth agrees that the Docketing Rule be eliminated. Notwithstanding the foregoing, the Docketing Rule should be eliminated only if the Rehabilitation Chapter retains certain occupancy requirements in an approval rule. Therefore, HealthSouth suggests that the Certificate of Need Approval Rule at COMAR 10.24.09.04C.(2) be retained but be modified as explained below.

#### THE APPROVAL RULE

The Approval Rule at COMAR 10.24.09.04C. includes certain threshold requirements for approval. HealthSouth submits that there should be an approval rule which includes both a minimum occupancy standard and a standard which permits

an applicant to demonstrate substantial evidence why the minimum occupancy standard should not apply in a particular circumstance.

HealthSouth suggests that the Commission look to the Jurisdictional Occupancy Standard for the approval of new nursing homes at COMAR 10.24.08.05B.(3) in the State Health Plan for Facilities and Services: Nursing Home, Home Health Agency and Hospice Services (the "Long Term Care SHP") set forth below for guidance:

- 3) Jurisdictional Occupancy
  - a) The Commission may approve a CON application for a new nursing home only if the average jurisdictional occupancy for all nursing homes in that jurisdiction equals or exceeds a 90 percent occupancy level for at least the most recent 12 month period, as shown in the Medicaid Cost Repots for the latest fiscal year, or the latest Maryland Long Term Care Survey, if no Medicaid Cost Report is filed. Each December the Commission will issue a report in nursing home occupancy.
  - (b) An applicant may show evidence why this rule should not apply.

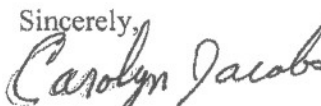
Using this standard as a guide, subsection (a) of an Approval Rule should set a standard requiring that the average jurisdictional occupancy for all rehabilitation hospitals and units in the applicable regional service area equals or exceeds an 80 percent occupancy level as shown in the Commission's most recently published occupancy report. To assure that the Occupancy Standard has teeth, however, HealthSouth suggests that the "evidentiary exception" in the Rehabilitation Chapter be written as follows:

- (b) An applicant must show substantial, reliable, and verifiable evidence to demonstrate why the jurisdictional occupancy rule should not apply.

An Approval Rule which includes both occupancy requirements and an evidentiary exception would meet the needs articulated by CMH in its Petition while maintaining the integrity of an occupancy requirement.

## CONCLUSION

In conclusion, HealthSouth respectfully submits the comments set forth herein. Thank you for your consideration of these comments.

Sincerely,  
  
Carolyn Jacobs